

## § 525.9

(c) The signed application constitutes the temporary authority to employ workers with disabilities at special minimum wage rates. A copy of the application must be forwarded within 10 days to the appropriate Regional Office of the Wage and Hour Division. Upon receipt, the application will be reviewed and, where appropriate, a certificate will be issued by the Regional Office. Where additional information is required or certification is denied, the applicant will receive notification from the Regional Office.

### **§ 525.9 Criteria for employment of workers with disabilities under certificates at special minimum wage rates.**

(a) In order to determine that special minimum wage rates are necessary in order to prevent the curtailment of opportunities for employment, the following criteria will be considered:

(1) The nature and extent of the disabilities of the individuals employed as these disabilities relate to the individuals' productivity;

(2) The prevailing wages of experienced employees not disabled for the job who are employed in the vicinity in industry engaged in work comparable to that performed at the special minimum wage rate;

(3) The productivity of the workers with disabilities compared to the norm established for nondisabled workers through the use of a verifiable work measurement method (see § 525.12(h)) or the productivity of experienced nondisabled workers employed in the vicinity on comparable work; and,

(4) The wage rates to be paid to the workers with disabilities for work comparable to that performed by experienced nondisabled workers.

(b) In order to be granted a certificate authorizing the employment of workers with disabilities at special minimum wage rates, the employer must provide the following written assurances concerning such employment:

(1) In the case of individuals paid hourly rates, the special minimum wage rates will be reviewed by the employer at periodic intervals at a minimum of once every six months; and,

(2) Wages for all employees will be adjusted by the employer at periodic

## 29 CFR Ch. V (7-1-12 Edition)

intervals at a minimum of once each year to reflect changes in the prevailing wages paid to experienced nondisabled individuals employed in the locality for essentially the same type of work.

### **§ 525.10 Prevailing wage rates.**

(a) A prevailing wage rate is a wage rate that is paid to an experienced worker not disabled for the work to be performed. The Department recognizes that there may be more than one wage rate for a specific type of work in a given area. An employer must be able to demonstrate that the rate being used as prevailing for determining a commensurate wage was objectively determined according to the guidelines contained in this section.

(b) An employer whose work force primarily consists of nondisabled workers or who employs more than a token number of nondisabled workers doing similar work may use as the prevailing wage the wage rate paid to that employer's experienced nondisabled employees performing similar work. Where an agency places a worker or workers with disabilities on the premises of an employer described above, the wage paid to the employer's experienced workers may be used as prevailing.

(c) An employer whose work force primarily consists of workers disabled for the work to be performed may determine the prevailing wage by ascertaining the wage rates paid to the experienced nondisabled workers of other employers in the vicinity. Such data may be obtained by surveying comparable firms in the area that employ primarily nondisabled workers doing similar work. The firms surveyed must be representative of comparable firms in terms of wages paid to experienced workers doing similar work. The appropriate size of such a sample will depend on the number of firms doing similar work but should include no less than three firms unless there are fewer firms doing such work in the area. A comparable firm is one which is of similar size in terms of employees or which competes for or bids on contracts of a similar size or nature. Employers may contact other sources such as the Bureau of Labor Statistics or